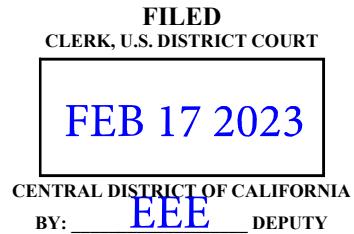


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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA; AND
15 THE STATE OF CALIFORNIA, EX
16 REL. MICHAEL S. LEE, M.D.,

17 Plaintiff/Relator,

18 vs.

19 REGENTS OF THE UNIVERSITY OF
20 CALIFORNIA; UNIVERSITY OF
21 CALIFORNIA, LOS ANGELES;
22 UNIVERSITY OF CALIFORNIA, LOS
23 ANGELES RONALD REGAN MEDICAL
24 CENTER;

25 Defendants.

26 CASE NO.

27 COMPLAINT FOR:

28 COMPLAINT FILED UNDER SEAL
PURSUANT TO 31 U.S.C. § 3730

LACV23-01233-RGK-JPRx

DEMAND FOR JURY TRIAL

**COMPLAINT FOR VIOLATIONS OF THE FALSE CLAIMS ACT
AND THE CALIFORNIA FALSE CLAIMS ACT**

I. INTRODUCTION

4 1. Qui tam Plaintiff/Relator MICHAEL S. LEE, M.D., (referred to hereinafter as “Dr.
5 Lee,” “Plaintiff,” or “Relator”) brings this action on his own behalf and on behalf of the United
6 States of America and the State of California to recover civil damages and penalties under the
7 False Claims Act (“FCA,” 31 U.S.C. §§ 3729 *et seq.*) and the California False Claims Act
8 (“CFCA,” Cal. Gov. Code §§ 12650 *et seq.*), from Defendants the REGENTS OF THE
9 UNIVERSITY OF CALIFORNIA (“the Regents”); THE UNIVERSITY OF CALIFORNIA, LOS
10 ANGELES (“UCLA”); and UCLA RONALD REGAN MEDICAL CENTER (“UCLA Medical
11 Center”) (collectively, “Defendants”).

12 2. The violations of the FCA and CFCA arise out of claims for payment submitted to
13 Medicare, beginning in or around 2008, or earlier, and continuing to the present day, by
14 Defendants. Defendants knowingly and routinely made and/or presented fraudulent claims for
15 reimbursement to Medicare, specifically for right-heart catheterizations (“RHCs”) that were not
16 supported by medical necessity. Defendants submitted various false claims, including claims
17 falsely certifying that they were in compliance with 42 U.S.C. section 1395y(a)(1)(A) (medically
18 necessary services).

19 3. The False Claims Act provides that any person who violates the FCA is liable for a
20 civil penalty of between \$5,500 and \$11,000, as adjusted by the Federal Civil Penalties Inflation
21 Adjustment Act of 1990, for each such claim, and three times the amount of the damages
22 sustained by the government. (31 U.S.C. § 3729(a)(1), 28 C.F.R. § 85.3(a)(9).) The FCA permits
23 a person (known as a “relator” having information regarding such conduct against the government
24 to bring an action on behalf of the government and to share in any recovery. (31 U.S.C. §§
25 3730(b)(1), 3730(d).) The complaint must be filed under seal, without service on the
26 defendants. (31 U.S.C. § 3730(b)(2).) The complaint remains under seal for a period of time
27 while the government conducts an investigation of the allegations in the complaint and
28 determines whether to join the action. (31 U.S.C. § 3730(b)(2)-(4).)

1 4. Pursuant to the FCA, Relator seeks to recover, on behalf of the United States and
2 the State of California, damages and civil penalties arising from Defendants' defrauding of
3 Medicare detailed below.

4 5. The facts and circumstances which give rise to Defendants' violations of the False
5 Claims Act have not been publicly disclosed within the meaning of 31 U.S.C. section
6 3730(e)(4)(A).

7 6. In any event, Relator is the original source of most or all of the allegations in this
8 Complaint, which was provided along with written disclosure of substantially all material
9 evidence of the allegations of this Complaint to the United States pursuant to 31 U.S.C. section
10 3730(b)(2).

11 **II. JURISDICTION AND VENUE**

12 7. This action arises under the laws of the United States, the FCA. This Court has
13 jurisdiction over the subject matter pursuant to 28 U.S.C. sections 1331, 1337 and 31 U.S.C.
14 section 3732. This Court has jurisdiction over the CFCA claims because Defendant's violations
15 of the CFCA arise out of a common nucleus of operative fact.

16 8. This Court has personal jurisdiction over Defendants because each and every
17 Defendant has minimum contacts, resides, and does business in the Central District of California.

18 9. Venue in this District is proper pursuant to 28 U.S.C. section 1331 because
19 Defendants reside in and do business in the Central District of California. At all times relevant to
20 this Complaint, Defendants regularly conducted substantial business in this District. All
21 violations alleged in this Complaint occurred in this District.

22 **III. PARTIES**

23 10. The United States of America and the State of California are the real parties in
24 interest as to the claims arising under the False Claims Act and the California False Claims Act,
25 respectively, as set forth herein.

26 11. Relator is a physician who is duly licensed to practice medicine by the State of

1 California, and who worked at all relevant times for the Defendants. Realtor is familiar with
2 Defendants' business operations from the time he spent working at UCLA Medical Center.
3 Further details regarding Relator and Relator's knowledge have been and will be provided to the
4 United States.

5 12. Relator is a board-certified interventional cardiologist who provided interventional
6 cardiology procedures at Defendant's hospital and in the Catheterization Laboratory ("Cath
7 Lab"). The Cath Lab is a specially fitted facility within the hospital that contains the necessary
8 equipment and personnel to perform interventional procedures.

9 13. Relator is informed and believes, and on the basis of such information and belief
10 alleges, that at all times herein mentioned Defendant the REGENTS is a California non-profit
11 formed under article IX, section 9 of the California Constitution.

12 14. Realtor is informed and believes, and on this basis of such information and belief
13 alleges, that at all times herein mentioned Defendant UCLA is a public, non-profit educational
14 institution, exempt under the IRS Code Section 501(c)(3).

15 15. Relator is informed and believes, and on the basis of such information and belief
16 alleges, that at all times herein mentioned Defendant UCLA Medical Center is a publicly-owned
17 hospital in the County of Los Angeles, business form unknown.

18 16. Relator is informed and believes and accordingly alleges that each Defendant is an
19 agent and employee of each and every Defendant and, in performing the acts alleged in this
20 complaint, was acting in the course and scope of said agency and employment. Relator further is
21 informed and believes and accordingly alleges that the agents and employees of each Defendant
22 were acting within the purpose and scope of said agency and employment and on behalf of each
23 other and each of the Defendants ratified and approved the acts of the other Defendants and of the
24 agents and employees of the various Defendants.

25 **IV. STATUTORY FRAMEWORK**

26 17. The California False Claim Act is substantially similar to the federal False Claims
27 Act. For purposes of outlining statutory framework, the FCA is referenced with the
28 understanding that the CFCA has mirroring provisions.

1 18. To prove a claim under the FCA, a Relator, must show that the defendant has
2 committed one or more of the various acts specified under 31 U.S.C. section 3729(a)(1),
3 constituting the making of a “false claim.” “Liability attaches upon proof that a false claim was
4 made, regardless of whether the government suffered damage.” (*United States ex rel. Anita*
5 *Silingo v. WellPoint, Inc.*, 904 F.3d 667, 674 (9th Cir. 2018).)

6 19. The elements of such a claim are: “(1) a false statement or fraudulent course of
7 conduct, (2) made with scienter, (3) that was material, causing (4) the government to pay out
8 money or forfeit moneys due.” (*U.S. ex rel. Hendow v. University of Phoenix*, 461 F.3d 1166,
9 1174 (9th Cir. 2006); *United States ex rel. Rose v. Stephens Institute*, 909 F.3d 1012, 1017 (9th
10 Cir. 2018.)

11 20. A typical claim actionable under the FCA is one where a claimant did not perform
12 the service for which he seeks compensation or where the claimant did perform the service but
13 overcharged the government. (*U.S. ex rel. Hopper v. Anton* (9th Cir. 1996) 91 F.3d 1261, 1266.)

14 21. However, the FCA’s reach is not limited to such claims. Under some
15 circumstances, claims submitted for services actually rendered for the correct amounts may still
16 be considered fraudulent and give rise to FCA liability if the services were rendered in violation
17 of other laws. (*Id.* at 1266-1267.)

18 22. A legally false claim occurs when a party certifies compliance with a statute or
19 regulation as a condition to payment, without actually complying with said statute or regulation.
20 (*Hendow, supra*, 461 F.3d at 1171.) A false certification may be expressly false or impliedly
21 false. (*Ibid.*) A claim is legally false under an express certification theory when the party making
22 the claim for payment expressly represents compliance with a statute or regulation. (*Ibid.*)

23 23. A claim is legally false under an implied certification theory when a claimant
24 makes no express statement regarding compliance with a statute or regulation, but by submitting a
25 claim for payment, implies that it has complied with any preconditions of payment expressly
26 contained in the relevant statutes or regulations. “[T]he implied false certification theory can be a
27 basis for liability. Specifically, liability can attach when the defendant submits a claim for
28 payment that makes specific representations about the goods or services provided, but knowingly

fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement. In these circumstances, liability may attach if the omission renders those representations misleading." (*Universal Health Services, Inc. v. U.S.*, 136 S.Ct. 1989, 1995 (2016), see also 31 U.S.C.A. § 3729 *et seq.*)

24. The most basic requirement for reimbursement eligibility under Medicare, Medicaid, Medi-Cal, and other government health care programs is that the service provided must be medically reasonable and necessary. (42 U.S.C. § 1395y(a)(1)(A), 42 U.S.C. § 1396 *et seq.*; 42 C.F.R. § 411.15(k)(1); *United States v. Rutgard*, 116 F.3d 1270, 1275-1276 (9th Cir. 1997) [“Participating providers are required to ensure that any services rendered to Medicare recipients are supported by sufficient evidence of medical necessity. 42 U.S.C. § 1320c-5(a)(1);” also noting that the CHAMPUS federal health insurance program for Department of Defense employees only covers medically necessary services and supplies, 32 C.F.R. § 199.4(a)(1)(i)]; *U.S. v. Popov*, 742 F.3d 911, 912-913 (9th Cir. 2014).) Submission of claims for services that are not medically necessary are fraudulent under the FCA. (*United States v. Chang*, 2018 WL 6011544 at *6 (C.D. Cal. June 1, 2018), *Frazier ex rel. U.S. v. Iasis Healthcare Corp.*, 392 Fed.Appx. 535, 537 (9th Cir. 2010); *United States ex rel. Polukoff v. St. Mark’s Hospital*, 895 F.3d 730, 742 (10th Cir. 2018); *Maa v. Ostroff*, 2013 WL 1703377, at *20 (N.D. Cal. April 19, 2013).) The requisite level of medical necessity may not be met where a particular procedure was performed solely for profit. (*U.S. ex rel. Kneepkins v. Gambro Healthcare, Inc.*, 115 F.Supp.2d 35, 41-42 (D.Mass. 2000.))

21 **V. FACTUAL ALLEGATIONS**

22 **A. Medically Unnecessary Services**

24. Relator was hired by Defendants as an interventional cardiologist in or about 2006. From 2006 through June of 2021, Relator performed procedures in the Defendant’s Cath Lab and was a member in good standing of the Defendant’s medical staff.

27. Based on his experience working in the Cardiology Department as an interventional cardiologist at UCLA Medical Center, Dr. Lee became aware that Defendants were

1 billing Medicare for unnecessary right-heart catheterizations (“RHCs”).

2 27. A RHC involves inserting a catheter into the heart and artery in the lung, putting
3 the patient at risk for bleeding complications, and possibly death. A RHC is medically necessary
4 when a patient has evidence of pulmonary hypertension (“PH”), which is elevated blood pressure
5 in the artery of the lungs measured in the form of: pulmonary artery pressure (“PAP”) or right
6 ventricular systolic pressure (“RVSP”). The performance of RHC is endorsed by peer-reviewed
7 research articles and guidelines only when PH is present.

8 28. UCLA Medical Center performed thousands of RHCs over decades on patients
9 regardless of the fact that the patients’ PAP and/or RVSP determined on echocardiography, which
10 is an ultrasound of the heart and measures PAP and RVSP, was measured as normal. UCLA
11 Medical Center routinely performed RHCs without medical literature, data, and guidelines to
12 support its performance. UCLA Medical Center’s aforementioned misconduct led to the
13 submission of false claims for payment to Medicare for this procedure.

14 29. Dr. Lee became aware that the billing practices of UCLA Medical Center were
15 possibly illegal in or around 2012. As early as 2018, Dr. Lee complained regarding the
16 aforementioned illegal conduct, to colleagues at the UCLA Medical Center. Dr. Lee was ignored,
17 and the aforementioned conduct continued. Dr. Lee is informed and believes that the conduct still
18 continues.

19 30. Relator is informed and believes, and on the basis of such information and belief,
20 allege, that the facts that RHCs were not medically necessary in the first place, for the diagnosis
21 or treatment of illness or injury or to improve the functioning of a malformed body member. (42
22 C.F.R. § 411.15(k)(1)).

23 31. Relator is informed and believes, and on the basis of such information and belief
24 alleges, that Defendants submitted claims to Medicare for payment for the medically unnecessary
25 RHCs.

26 32. Relator, out of a concern that the RHCs could be endangering patient quality of
27 care as well as patient health and safety without medical necessity, raised the issue of medically
28 unnecessary RHCs with his colleague at UCLA Medical Center in 2018. The issue was never

1 addressed nor resolved. It is Dr. Lee's impression that the practice of illegal billing continues as
2 of the date of this Complaint.

3 **CLAIM I**

4 **VIOLATION OF THE UNITED STATES FALSE CLAIMS ACT**

5 **31 U.S.C. § 3729(a)(1)(A), (a)(1)(B), (a)(1)(G) and (a)(1)(C)**

6 **(Against all Defendants)**

7 33. The allegations of the foregoing paragraphs are incorporated herein as if fully
8 realleged.

9 34. Defendants, directly and/or by and through their agents, officers, and employees,
10 knowingly presented or caused to be presented, to officers or employees of the United States false
11 claims for payment or approval in violation of 31 U.S.C. section 3729(a)(1)(A) for professional
12 and technical services based on the prior Factual Allegations.

13 35. Defendants, directly and/or by and through their agents, officers, and employees,
14 fraudulently concealed and intentionally failed to report funds improperly received from the
15 United States for devices and procedures in violation of 31 U.S.C. section 3729(a)(1)(G) based on
16 the prior Factual Allegations.

17 36. Defendants, directly and/or by and through their agents, officers, and employees,
18 acted in violation of the False Claims Act for conspiring to commit a violation of the False
19 Claims Act at 31 U.S.C. section 3729(a)(1)(A), and/or (G) in violation of 31 U.S.C. section
20 3729(a)(1)(C).

21 37. In engaging in the conduct alleged above, each of the Defendants, acting either on
22 their own behalf or through their agents, officers, and employees, acted knowingly or in reckless
23 disregard of the truth, as defined in 31 U.S.C. section 3729, violated the False Claims Act.

24 38. Defendants knowingly, or in reckless disregard of the truth, made or caused to be
25 made false and/or fraudulent medical records to be presented for reimbursement, and knowingly
26 or in reckless disregard of the truth presented or caused to be presented false and/or fraudulent
27 claims for reimbursement to Medicare, a federally-funded health insurance program.

28 39. Relators were working as physicians for Defendants when they came to have

knowledge of the false, fraudulent conduct.

40. Defendants knew these claims were not in compliance with the federal and state anti-kickback and physician self-referral laws for various reasons, including but not limited to the fact that Relators and others known to Relators brought the aforementioned violations illegal financial arrangement to Defendants' attention through oral and written communications between [date range].

41. The United States reimbursed Defendants for these false or fraudulent claims.

42. As a result of Defendants' violation of 31 U.S.C. section 3729, the United States has suffered damages in an amount to be determined at trial. "A person may bring a civil action for a violation of section 3729 for the person and for the United States Government." (31 U.S.C. § 3730(b).)

CLAIM II

CALIFORNIA FALSE CLAIMS ACT

(Cal. Gov't. Code § 12651)

(Against all Defendants)

43. The allegations of the foregoing paragraphs are incorporated herein as if fully realleged.

44. The California False Claims Act (Cal. Govt. Code § 12650 *et seq.*) is substantially similar to the federal False Claims Act. The language of California Government Code section 12651 tracks that of 31 U.S.C. section 3729.

45. Defendants, directly and/or by and through their agents, officers, and employees, knowingly presented or caused to be presented, to officers or employees of the State of California, false claims for payment or approval in violation of California False Claims Act, California Government Code section 12965(1)(a)(1) for professional and technical services based on the prior Factual Allegations.

46. Defendants, directly and/or by and through their agents, officers, and employees, knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim in violation of California Government Code section 129651(a)(2) for

1 professional and technical services based on the prior Factual Allegations.

2 47. Defendants, directly and/or by and through their agents, officers, and employees,
3 fraudulently concealed and intentionally failed to report funds improperly received from the
4 United States for procedures in violation of California Government Code section 129651(a)(7)
5 based on the prior Factual Allegations.

6 48. Defendants, directly and/or by and through their agents, officers, and employees,
7 acted in violation of the False Claims Act for conspiring to commit a violation of California
8 Government Code section 129651(a)(1), (2), and/or (7), in violation of California Government
9 Code section 129651(a)(3).

10 49. In engaging in the conduct alleged above, each of the Defendants, acting either on
11 his/her/its own behalf or through their agents, officers, and employees, acted knowingly or in
12 reckless disregard of the truth, as defined in California Government Code section 129651,
13 violated the False Claims Act.

14 50. Defendants knowingly, or in reckless disregard of the truth, made or caused to be
15 made false and/or fraudulent medical records to be presented for reimbursement, and knowingly
16 or in reckless disregard of the truth presented or caused to be presented false and/or fraudulent
17 claims for reimbursement to the State of California for state-funded health insurance programs.

18 51. Relator was working as physician for Defendants when he came to have
19 knowledge of the false, fraudulent conduct.

20 52. Defendants knew these claims were not in compliance with the federal and state
21 laws for various reasons, including but not limited to the fact that Relator brought the
22 aforementioned violations illegal financial arrangement to Defendants' attention through oral and
23 written communications as early as 2018.

24 53. The State of California reimbursed Defendants for these false or fraudulent claims.

25 54. As a result of Defendants' violations of California Government Code section
26 129651, the State of California has suffered damages in an amount to be determined at trial. "A
27 person may bring a civil action for a violation of this article for the person..." (Cal. Govt. Code §
28 129652(c)(1).)

PRAYER FOR RELIEF

WHEREFORE, Relators pray for judgment as follows with respect to all causes of action:

1. All damages, penalties, and proceeds applicable under 31 U.S.C. § 3730(d);
 2. All damages, penalties, and proceeds applicable under Cal. Govt. Code §§ 12652(g)(2)-(3);
 3. Attorney's fees and costs;
 4. Such other relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Relators hereby demand a jury trial on all issues so triable.

DATED: February 17, 2023

FENTON LAW GROUP LLP

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